IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 835 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE D.K.TRIVEDI
and
HON'BLE MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PA GEORGE JT.CIVIL JUDGE (J.D)& J.M.F.C.

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 835 of 2004

MR BD KARIA for Petitioner No. 1

MR SP HASURKAR AGP for Respondent No. 1

MR JB PARDIWALA for Respondent No. 2

LAW OFFICER BRANCH for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE D.K.TRIVEDI
and
HON'BLE MR.JUSTICE K.M.MEHTA

Date of decision: 05/07/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.K.TRIVEDI)

In this petition, the petitioner, who was appointed as Judicial Officer and working as Civil Judge (JD), who was suspended from service as per suspension order issued by the High Court on 27.12.2002, has filed this petition and prayed for certain directions namely for quashing and setting aside the said suspension order dated 27.12.2002 as well as prayed for quashing the departmental inquiry initiated against the petitioner, as informed by the High Court to the petitioner under Confidential letter dated 23rd July, 2003. The petitioner has, in alternatively, prayed that the respondent No. 2 - Registrar, High Court of Gujarat be ordered to supply true copies of the documents referred to in the statement of imputations for holding Departmental Inquiry dated 23.7.2003 Annexure - C to the petition and also prayed to extend the time for 15 days for filing written statement from the receipt of the copies of such documents. By way of interim relief, the petitioner has prayed for stay of further proceedings of the Departmental Inquiry initiated against him and further prayed for change of his head quarter from Palanpur to Rajkot and the petitioner may be permitted to allow to occupy the judicial quarter allotted to him at Palanpur.

2. As per order passed by the Hon'ble Chief Justice, a separate board was notified before us for final hearing and we have heard Mr. Karia, learned advocate, who appeared for the petitioner and Mr. Pardiwala, learned advocate, who appeared for respondent No. 2 Registrar, High Court of Gujarat and Mr. Hasurkar, learned AGP for respondent No. 1.

3. After hearing the arguments, we have disposed off the petition by giving certain directions to the respondent No. 2 in respect of the request made by the petitioner for change of his Head Quarter from Palanpur to Rajkot and to decide the representation as expeditiously as possible. However, Mr. Pardiwala, learned advocate for respondent No. 2 on the next day at 11-00 AM has requested us that the matter, which we have disposed off and the judgement, which we have delivered in open court, may not be signed, as he wants to place certain facts before this Court, as Registry of this Court has received the letter from the petitioner, for which, he wants to place the same before us for our

consideration. Mr. Karia, learned advocate was not available as he has filed sick note and accordingly, considering the request of Mr. Pardiwala, we have kept the matter for rehearing today and as per order dated 2.7.2004, we have further observed that the judgement, which I (D.K. Trivedi, J.) have dictated is not to be transcribed.

4. When the matter was notified before us today, Mr. Karia, learned advocate for the petitioner has also expressed his regrate for not remaining present before the court on 2.7.2004 and he has further informed us that he has already informed the petitioner that he should not address such letter, in the language, in which he has addressed to the Registrar of this Court and further informed that his client has also expressed his apology for writing such letter in past.

5. We have heard Mr. Karia at length and he has taken us through the petition and the documents attached thereto. As found from the petition that prior to filing of this petition, the petitioner has approached the Supreme Court of India and filed Writ Petition being Writ Petition (Civil) No. 540 of 2003 and as found from the order produced before us, the Supreme Court has disposed off the said petition on 19th December, 2003, in which, the Supreme Court has passed the following order, which reads as under :-

> "Learned Counsel seeks leave of the Court to withdraw the petition with a view to file a petition under Article 226 of the Constitution of India. The writ petition is, accordingly, dismissed as withdrawn."

In view of the liberty granted, the petitioner has approached this court and represented this writ petition under Articles 14, 16, 21 and 226 of the Constitution of India and prayed reliefs as observed above.

6. Considering the submissions made before us and in light of the challenge made by the petitioner, in which the petitioner has prayed for quashing the departmental inquiry initiated against the petitioner, and the fact that for seeking such relief, Mr. Karia, is not in a position to satisfy us that the inquiry initiated against the petitioner deserves to be quashed and accordingly, Mr. Karia has pressed in service and he requested that even to face the departmental inquiry, the petitioner has

called for the documents, which were referred to in the statement of imputations, for which, necessary directions be given to supply those documents, to unable the petitioner to submit his written statement and further requested us that petitioner has also requested to have an inspection of the record, for which, the departmental inquiry is held against the petitioner and after the inspection of the said record, the Hon'ble Court may be pleased to grant time to submit the written statement in the said departmental proceedings.

7. Mr. Karia has contended before us that the petitioner has requested for supply of copies of documents referred to in the statement of imputations at Annexure - C, for which the petitioner has addressed a letter to the Registrar of this Court for supply of documents which were referred in the statement of imputations. Mr. Karia has also urged before us that the petitioner has approached the High Court requesting for change of his Head Quarter from Palanpur to Rajkot. Said request by way of representation was addressed by the petitioner to the Registrar of this Court through District Court, Palanpur. His letter dated 31.12.2002, in which, the petitioner has requested that as the petitioner was not provided Government accommodation at Palanpur and his family members are staying at Rajkot and with the subsistence allowance, he is not in a position to purchase private suitable accommodation. He has requested for change of Head Quarter from Palanpur to Rajkot. The said representation was examined by the High Court and said request was turned down after examining the said representation and the petitioner was informed accordingly as per letter dated 10th March, 2003 that the request for change of Head Quarter from Palanpur to Rajkot was considered and the same was rejected. The petitioner was also intimated through trial Court on 13th March, 2003 and the petitioner has also annexed the said reply, which is at Annexure - E to this petition.

8. Mr. Pardiwala, learned advocate appearing for the respondent No. 2 has contended before us that so far as the departmental inquiry against the petitioner, for which, the petitioner was intimated by the Registry of this Court on 23.7.2003 and as per the decision taken, it was decided to hold departmental inquiry on the charges mentioned in the said communication, which is at Annexure - C and the petitioner was also suspended from service, for which, the petitioner was also informed and the said order is also annexed by the petitioner at Annexure - B to this petition.

9. As this Court is of the view that once the departmental inquiry is initiated on the charges mentioned and with the material in the form of documents and the petitioner has ample opportunity to defend himself in the said departmental inquiry and the relief for quashing the said departmental inquiry, it is not possible for us to quash the same and accordingly, the said relief is deserve to be rejected. However, on considering the request for supply of documents and the inspection of the petitioner, which the petitioner has sought for, Mr. Pardiwala, learned advocate has brought to our notice that request of petitioner for supply of documents are concerned and even for inspection of the record, the Registry of this court has already forwarded the said documents through learned District Judge, Palanpur with a direction that these documents be furnished to the petitioner. We have also perused the letter dated 25th March, 2004 issued by the District Judge, Palanpur addressed to the Registry of this Court. As found from the said letter, the petitioner has returned the said documents on the ground that the documents which were supplied to him were not certified documents and further that as he has already filed writ petition and challenged the action of initiating departmental inquiry, he is not accepting the documents and he has requested that these documents be given to him under judicial order.

10. The stand taken by the petitioner is not found to be proper and the ground made by the petitioner before us that he was not furnished the documents, is not found to be proper, as the documents, which were furnished to him, were refused by him. In light of this fact and when the documents are already returned by the petitioner, which according to us, the stand taken by him, is not proper. However, in the interest of justice, we feel that the documents, which were returned, be handed over to Mr. Karia, who is representing the petitioner and even we also grant inspection of the record, to unable the petitioner to submit his written statement as well as to give time to submit his written statement in the departmental inquiry. Accordingly, Registry is directed to hand over the documents to Mr. Karia and Mr. Karia has agreed that to hand over the documents, which he is going to receive, to the petitioner. Registry is accordingly, directed to furnish documents to Mr. Karia immediately. We also permit the petitioner to take inspection of the record by granting time upto 23rd July, 2004 and accordingly, we grant time to file written statement upto 16.8.2004. In spite of this, if no written statement is filed, it is presumed that the

petitioner has nothing to say in his defence. Mr. Karia has also agreed that he will accept the documents on behalf of the petitioner and he shall hand over the same to the petitioner immediately. On safer side, the Registry is directed to hand over the documents to Shri Karia on or before 9th May, 2004 and by giving such direction, relief sought for by the petitioner for supply of documents does not survive as the said request is fulfilled.

11. To examine the contention of Mr. Karia for changing the Head Quarter from Rajkot, for which, earlier representation made by the petitioner was rejected and thereafter, the petitioner has under letter dated 30.7.2003 made another representation to the Registrar of this court, requesting for reconsideration of his representation sympathetically for change of his Head Quarter from Palanpur to Rajkot and till date the petitioner has not replied any reply from the Registry of this court. The petitioner has annexed the said representation at Annexure - F to this petition.

12. We have inquired from Mr. Pardiwala that whether the Registry of this Court has received the said representation of the petitioner dated 30.7.2003 and what is the out come of the said representation. Mr. Pardiwala has accordingly inquired from the Registry and informed us that till today, the Registry has not received the said representation. As found from the Annexure - F, the petitioner has forwarded the said representation through Civil Judge (SD) Palanpur and in spite of that, the said representation has not reached to the Registry of this Court. The fact remains that as the Registry of this court has not received the representation dated 30.7.2003, the same has not been examined. Now, the petitioner has approached this Court and the petitioner has also annexed the said representation at Annexure - F, accordingly, we are of the view that the representation attached to this petition be treated as representation of the petitioner and the same be examined in accordance with law as expeditiously as possible and the decision on the said representation be accordingly informed to the petitioner. Accordingly, while disposing of this petition, we only direct that the representation of the petitioner dated 30.7.2003 Annexure - F to this petition be ordered to be decided in accordance with law as expeditiously as possible and the decision on the same be informed to the petitioner accordingly, considering the grounds mentioned in the application that family members of the petitioner are staying at Rajkot and there is no suitable

accommodation available to the petitioner at Palanpur. Accordingly, with these observations, petition is disposed off. Rule is discharged with no costs.

(D.K. Trivedi, J.)

(K.M. Mehta, J.)
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